

Reality Check: Sometimes There Are No Do-Overs
Today's Decisions Can Have Legal and Long-Term Consequences

Witness Stand Script

The following optional script provides a framework for the questioning of five witnesses by counsel for the plaintiff and the defense. It can be revised as needed.

Characters

- **Judge**

- **Counsel for Plaintiff**

Plaintiff's Witnesses

- Sidney Young (Male or Female Plaintiff)
- Javier Hernandez (Plaintiff's Cousin)
- Tracy Gardner (Defendant's Mother - Hostile Witness)

- **Counsel for Defendants**

Defendants' Witnesses

- Riley Gardner (Defendant)
- Alex Williams (Defendant's Female or Male Neighbor)

Testimony of Sidney Young (Plaintiff)

Counsel for Plaintiff: Your Honor, we call our first witness, Mr. Sidney Young.

Judge: Mr. Young, please come up to the witness stand and raise your right hand.

Clerk: Remain standing. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Young: Yes.

Counsel for Plaintiff: Please state your name and age for the record.

Young: My name is Sidney Young. I'm 18 years old now.

Counsel for Plaintiff: Tell us what happened on the evening of May 11, 2007.

Young: Well, it was a Friday and I had just come to town to spend the weekend with my cousin Javier. We went to a party after their soccer team had just won the regional championship, and everybody was pretty pumped. At one point, some guys decided to go get something to eat. Javier and I decided to go. I had hit it off with one of Javier's friends, Riley. He's cool — like the guys I hang with at my own school. I got in the front seat of Riley's car, and Javier and Riley's friend Alex got in the back.

Counsel for Plaintiff: What happened then?

Young: Well, Riley was cruising along when his cell phone rang. He looked at it and must have seen a text message because he said something like, "Taylor is driving me crazy." He then started texting — didn't slow down or anything, and it was raining and at night, which was definitely not cool — made me edgy. He later tossed the phone into my lap — or dropped it — right before the car crashed.

Counsel for Plaintiff: Tell us what you remember about the accident.

Young: It's kind of a fuzzy blur, but I remember we skidded, then slammed into a light pole in the Parkway median. The paramedics had to pry me out of the car.

Counsel for Plaintiff: Describe your injuries from the accident.

Young: Well, I couldn't feel my right leg and foot, which were crushed in the accident. I couldn't even clench my right fist to bang on the car door to get out. At the ER, I was in so much pain I could barely answer the doctors' questions. The doctors told me three ribs were broken. That must have been why every breath was killer. I couldn't move the toes on my right foot. They did surgery on me that night to put a metal rod and pins in my leg, which will have to be replaced later. The whole thing has been extremely painful.

Counsel for Plaintiff: Any long-term consequences from the accident?

Young: The worst thing is the pain in my back and legs. I can't sit through a class period – so college is out. I can't take a desk job, let alone go to a movie or a game. My hand goes numb now when I'm texting, working on a computer, or playing video games.

I had planned to be a commercial airline pilot, but all that is out the window now. I'm 18, and my entire life is messed up because of this. Riley let some girl get under his skin instead of paying attention to the road and he almost cost me my life. He might as well have, as banged up as I am.

Counsel for Plaintiff: Thank you, Sidney. Nothing further.

Judge: Does the defense have any questions for this witness?

Counsel for Defendants: We do, Your Honor. Mr. Young, have *you* ever used a cell phone while operating a vehicle?

Counsel for Plaintiff (*standing, outraged*): Objection! Irrelevant, Your Honor.

Counsel for Defendants: Question withdrawn. Mr. Young, it was raining hard the night of the accident, wasn't it?

Young: Yes, that's true.

Counsel for Defendants: Isn't it true that you passed two other cars that had spun out of control on Wells Gate National Parkway that night?

Young: Yes, which is why Riley should have been driving even *more* carefully.

Counsel for Defendants: You testified that Mr. Gardner tossed the phone, or dropped it, into your lap. Did he say anything to you when he did that?

Young: Not that I remember.

Counsel for Defendants: Thank you, Mr. Young. No further questions.

Judge: Redirect?

Counsel for Plaintiff: Yes, very briefly. Mr. Young, within how many seconds of the collision was Mr. Gardner texting?

Young: I don't know. It was right before – like, just a few seconds.

Counsel for Plaintiff: Did you ever tell Mr. Gardner to stop texting?

Young: I did, but he played it off. I didn't want to press the point because I didn't want to distract him even more when we were already in a bad driving situation.

Counsel for Plaintiff: Nothing further.

Judge: Mr. Young, you may step down. . . . Next witness, counsel?

Testimony of Javier Hernandez (Witness for the Plaintiff)

Counsel for Plaintiff: Next, we would like to call Mr. Javier Hernandez.

Judge: Mr. Hernandez, would you come up?

Clerk: Remain standing and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Hernandez : I do.

Counsel for Plaintiff: Please state your name and age for the record.

Hernandez : Javier Hernandez. I'm 17.

Counsel for Plaintiff: Could you tell us what happened on the evening of May 11, 2007?

Hernandez: My cousin Sid was visiting from out of state for the weekend. We ended up over at Austin Crosher's . . . hanging out and playing pool. Around 10:30, we decided to go cruising for burgers. We piled into Riley's car. Riley was driving, and Sid rode shotgun. Alex and I were in the back seat.

Counsel for Plaintiff: What happened next?

Hernandez: Well, as soon as we got out of the driveway, Riley got a text message from Taylor Bowling, and they were going back and forth. We were on the Parkway, a four-lane divided highway. The next thing I know, we're skidding. Riley must have slammed on the brakes and lost control of the car.

Counsel for Plaintiff: Then what happened?

Hernandez: The front passenger door must have hit the light pole in the median first, because the car was wrapped around it. Alex and I were able to get out and so was Riley, but Sid's door was all bent out of shape. He was pinned inside and couldn't move. Somebody driving by must have called 9-1-1, because in a few minutes the ambulance arrived. The paramedics got Sid out and took him to the hospital. The rest of us pretty much walked away with bruises, but Sid was in really bad shape.

Counsel for Plaintiff: Thank you, Mr. Hernandez. No further questions.

Judge: Any questions on cross-examination?

Counsel for Defendants: Yes, Your Honor. Mr. Hernandez, what is your relationship to the Plaintiff in this case?

Hernandez: I'm his first cousin. Our mothers are sisters.

Counsel for Defendants: Tell us, isn't it true that just before the accident in this case, you saw two cars that had skidded off the road on the Parkway?

Hernandez: Yes, that's true. All the more reason Riley should have paying more attention – with both hands on the wheel – keeping the car under control.

Counsel for Defendants: Thank you, Mr. Hernandez. No further questions.

Judge: Redirect?

Counsel for Plaintiff: No, Your Honor.

Judge: Mr. Hernandez, you may step down. Next witness, counsel?

Testimony of Ms. Tracy Gardner (Witness for the Plaintiff - *Hostile*)

Counsel for Plaintiff: Next we would call Ms. Tracy Gardner.

Judge: Ms. Gardner, please come to the stand and raise your right hand.

Clerk: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Tracy Gardner: I do.

Counsel for Plaintiff: Please state your name and age for the record.

Tracy Gardner: My name is Tracy Gardner. I'm 46.

Counsel for Plaintiff: What is your relationship to Riley Gardner?

Tracy Gardner: I'm his mother.

Counsel for Plaintiff: Are you also a party in this lawsuit?

Tracy Gardner: Yes, I'm being sued along with my son.

Counsel for Plaintiff: Are you testifying voluntarily for the plaintiff today?

Tracy Gardner: No, your law firm served me with a subpoena requiring me to testify.

Counsel for Plaintiff: Your Honor, we would ask permission to treat Ms. Gardner as a hostile witness?

Judge: Granted.

Counsel for Plaintiff: Did your son Riley own a Honda Accord on May 11, 2007?

Tracy Gardner: No, it was my car. But because he maintains the 3.5 grade point average that I require and obeys my curfews, I sometimes let him use it in the afternoon or on weekend nights.

Counsel for Plaintiff: Did he own a cell phone at the time?

Tracy Gardner: Well, I pay the phone bill – it’s a family plan – but he has exclusive use of the phone, if that’s what you mean.

Counsel for Plaintiff: Did you ever ride in the car while your son was driving?

Tracy Gardner: Yes, quite often.

Counsel for Plaintiff: Did you ever witness him using the cell phone to send text messages while driving the vehicle?

Tracy Gardner: Sometimes, but usually it was when we were stopped in traffic.

Counsel for Plaintiff: Did you ever advise your son that doing so was dangerous?

Tracy Gardner: Maybe a couple of times, but he was usually pretty careful.

Counsel for Plaintiff: Did you ever take steps to prevent his dangerous behavior?

Tracy Gardner: That wasn’t necessary. My son has had to grow up quickly since his father was killed in a car accident. He takes driving very seriously. He knows the consequences of being reckless. He’s very responsible.

Counsel for Plaintiff: Was it responsible of him to text message while driving, despite your multiple warnings?

Tracy Gardner: I guess not, but, as I said, I’ve seen him do it safely.

Counsel for Plaintiff: No more questions.

Judge: Defense counsel, any questions for this witness?

Counsel for Defendants: Yes, Your Honor. Ms. Gardner, are you always able to

control your son's behavior?

Tracy Gardner: No parent can **guarantee** that, especially when their kids are 17 or 18 years old. But Riley has worked hard to earn my trust since his father's death, and I have full confidence in him.

Counsel for Defendants: No further questions.

Judge: Redirect?

Counsel for Plaintiff: Ms. Gardner, isn't it true that you could have taken away Riley's cell phone or his car keys to underscore the importance of your warnings and to prevent him from trying to text while driving?

Tracy Gardner: Not really. Our family uses the cell phone to stay in touch throughout the day – things come up – and Riley needs the car for his after-school job. He comes home from school and helps his sisters with their homework. When I get to the house, we always have dinner together as a family, then Riley drives to his part-time job. He's back by his curfew at 10:30 p.m. on school nights. I already have him on a pretty tight leash. He just started dating this year.

Counsel for Plaintiff: But isn't it true that you *could* have taken away the phone and car keys?

Tracy Gardner: Well, I suppose I *could* have, but. . . .

Counsel for Plaintiff (*interrupting*): Thank you. No further questions.

Judge: You may step down, Ms. Gardner. Counsel, any other witnesses?

Counsel for Plaintiff: No, Your Honor. The plaintiff rests.

Judge (*to defense counsel*): You may call your first witness.

Testimony of Riley Gardner (Defendant)

Counsel for Defendants: We call Mr. Riley Gardner.

Judge: Mr. Gardner, please come up to the witness stand.

Clerk: Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Riley Gardner: Yes, sir.

Counsel for Defendants: Please state your name and age for the record.

Riley Gardner: My name is Riley Gardner. I'm 18.

Counsel for Defendants: Could you tell us about yourself and your family?

Riley Gardner: I'm a high school senior now. I live with my mom and three younger sisters. I watch my sisters after school until Mom gets home from work, then I go to my job and get back by 10 p.m. I do homework, then go to bed. My dad died in a car accident about six years ago, so it's just the five of us at home.

Counsel for Defendants: Tell us what happened on the evening of May 11, 2007.

Riley Gardner: Well, our soccer team had just won regionals. Mom let me have the car, so my next-door neighbor Alex Williams and I picked up my friend Javier and his cousin Sid, and we all went to a party. I promised to meet Taylor Bowling — another friend of mine — for coffee later at The Wireless Café. I figured she'd be doing homework there, like usual, and wouldn't care when I showed up.

Counsel for Defendants: What happened at the party?

Riley Gardner: We played pool and hung out and, at one point, a couple of us decided to go get something to eat at Chandelier's. Javier, his cousin Sid, and my friend Alex were in my car, and we were on the Parkway when my cell rang with a text message from Taylor. It said, "ADN . . . CB NOW."

Counsel for Defendants: And what did you understand that to mean?

Riley Gardner: That meant “Any day now . . . ! Call back now!” All-caps means the message is serious — it’s like yelling. She was driving me crazy. She knew I needed some space to be with my friends and that we were going to meet up later.

Counsel for Defendants: What did you do then?

Riley Gardner: I text messaged her back: “soon.” But a minute later, my cell rings again and she’s texting, “NOW!” — in all-caps. I’d had it. It was late, and raining, so I just hit reply, then tossed the phone to Sid and asked him to type “n-t-w-d,” which means “no texting while driving.” I wanted Taylor to get the picture that I’d be in touch with her as soon as I could.

Counsel for Defendants: What happened after that?

Riley Gardner: Next thing I know, the car is skidding out of control and hits a pole. I’m very sorry about Sid getting hurt, and I know he and his parents and Javier will always blame me for everything, but I don’t think it really was my fault. That’s why they call them accidents. The road was slippery – and actually, we saw several cars that had skidded out of control that night.

Counsel for Defendants: Thank you. Nothing further, Your Honor.

Judge (to Counsel for Plaintiff): Counsel?

Counsel for Plaintiff: Mr. Gardner, how many times in your life would you estimate that you have sent text messages while operating a motor vehicle?

Riley Gardner: I have no idea.

Counsel for Plaintiff: Would it be fair to say that you’ve sent at least 100 text messages while operating a motor vehicle?

Riley Gardner: I don’t keep count, but yeah, that’s probably true. I’ve got a lot going on. It’s not a big deal, ’cause I can text without looking down at the cell.

Counsel for Plaintiff: Isn’t it true, Mr. Gardner, that texting requires glances at the keyboard and screen — even for the most proficient users?

Riley Gardner: Well, yeah, but I can glance down and back real quick.

Counsel for Plaintiff: Did your mother ever see you texting while driving?

Riley Gardner: Maybe a few times.

Counsel for Plaintiff: Did she approve of it?

Riley Gardner: She just said that I should focus on the road.

Counsel for Plaintiff: Mr. Gardner, you've just admitted that you've probably sent more than 100 text messages while driving. I would remind you that you are under oath. Do you expect us to believe that, right before the accident in question, you asked Sidney Young, whom you'd just met, to intervene in an argument with your girlfriend and text message her "n-t-w-d"— "no texting while driving"?

Counsel for Defendants (*standing, outraged*): Objection, Your Honor!

Counsel for Plaintiff: I withdraw the question. Nothing further.

Judge: Any redirect?

Counsel for Defendants: Yes, Your Honor. Mr. Gardner, were you sending a text message at the time the vehicle collided with the light pole?

Riley Gardner: No, I was not. By then, I had already tossed Sid the phone.

Counsel for Defendants: Thank you. No more questions.

Judge: Mr. Gardner, you may step down. Defense counsel, your next witness?

Testimony of Alex Williams (Witness for the Defendant)

Counsel for Defendants: The defense would call Alex Williams to the stand.

Clerk: Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Williams: Yes.

Counsel for Defendants: Please state your name and age for the record.

Williams: Alex Williams. 17.

Counsel for Defendants: Where were you on the evening of May 11, 2007?

Williams: I was playing pool at Austin Crosher's with Riley, Javier and his cousin Sid. Around 10:30 or so, we headed over to Chandelier's in Riley's car to get something to eat. Sid was up front with Riley. Javier and I were in the back seat.

Counsel for Defendants: Then what happened?

Williams: Riley was texting something to Taylor Bowling. He was dating her, and I guess she was getting clingy – calling and texting him a lot. She and I used to be friends and she tends to smother guys. The roads were slick and when Riley saw a couple of cars on the side of the road, he threw his phone to Sid and asked him to text Taylor for him. Riley is actually a really safe driver. We go a lot of places together.

Counsel for Defendants: What happened next?

Williams: Well, everything seemed to go into slow motion. We skidded toward the median, then there was a terrible sound when we crashed. I'll never forget it. The next thing I know Sid is yelling about his hand and his leg. Javier, Riley, and I managed to get out of the car, then we all tried to get Sidney out. Sidney looked pretty messed up.

Counsel for Defendants: Thank you. No further questions.

Judge: Cross?

Counsel for Plaintiff: Is it fair to say that, because you were in the back seat, you couldn't see everything that actually happened in the accident?

Williams: Well, things did happen pretty fast. But I know the crash wasn't because Riley was texting, because he handed off the phone to Sid before that.

Counsel for Plaintiff: How long have you known Riley Gardner?

Williams: Since first grade. We're next-door neighbors.

Counsel for Plaintiff: Is it fair to say that you are good enough friends that you would do just about anything to help him?

Williams: Absolutely. We're tight. We always say we've got each other's back.

Counsel for Plaintiff: Would you be willing to lie under oath to protect him?

Counsel for Defendants (*standing up, outraged*): Objection, Your Honor!

Judge: Overruled. The witness will answer the question.

Williams: No, I wouldn't do that.

Counsel for Plaintiff: We have nothing further, Your Honor.

Judge: Any redirect?

Counsel for Defendants: No, Your Honor. The defense rests.

Judge: Okay. The witness may step down. Ladies and gentlemen of the jury, we're going to take a short break, and when we return, we will hear the parties' closing arguments. I will then provide you with some instructions on the relevant law and how you should conduct your deliberations. The courts stands in recess.